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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,197	09/17/2003	Jean-Christophe Simon	LOREAL 3.0-060	3901
<div>530 7590 10/29/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090</div>				
			EXAMINER PARVINI, PEGAH	
			ART UNIT 1793	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/664,197	Applicant(s) SIMON, JEAN-CHRISTOPHE	
	Examiner Pegah Parvini	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40, 42 and 44-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40, 42, and 44-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The letters of "C" and "M" are not defined in Figure 4; thus, there is insufficient antecedent basis for "C" and "M" in said claims.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 9-13, 16-23, 26, 29-30, 32-34, 36-37, 39-40, 42, 44-45, 47, 49, and 51 are rejected under 35 U.S.C. 102(b) as being unpatentable by WO 00/75240 to Simon. For convenience, references have been made to pages and lines of the translation of WO 00/75240 document (as attached).

Art Unit: 1793

5. Regarding claims 1 and 17, Simon teach an interferential pigment with a multilayer structure and a composition, specifically a cosmetic one, containing said pigment (page 2, lines 1-3), wherein said composition naturally masks the imperfections of the skin or of keratinic fibers (hair, eyelashes, eyebrows), in human being in which the type of skin involved may be the Caucasian, light brown, dark brown, or Asian (page 2, lines 20-21; page 4, lines 1-2). Furthermore, said pigment is characterizes by the fact that the multilayer structure has a spectral reflectance corresponding to a predetermined type of skin or materials, specifically keratinic fibers for at least part of the visible spectrum or even the totality of the visible spectrum; preferably, the spectral reflectance of the multilayer structure deviates, for the considered part of the visible spectrum, no more than $\pm 10\%$ from the reference spectral reflectance (page 3, lines 18-22; page 4, 21-24; page 5, lines 3-5). It is noted that Simon discloses that the assumption regarding the visible spectrum is that it includes all wavelengths between 400 nm and 700 nm (page 9, lines 9-11). In addition, in Fig. 2 (page 26), Simon discloses that the layers of high and low reflective indices are totally covering one another; the top layer covering the underlying layer (page 7, lines 13-14; page 16).

6. Regarding claims 9-12, 19, 23-25, and 26, Simon discloses that the spectral reflectance of the multilayer structure of the pigment, for the visible spectrum which includes wavelengths between 400 nm and 700 nm, is no more than " $\pm 10\%$ " from the reference spectral reflectance (page 4, lines 21-24; page 9, lines 9-11); therefore, it

Art Unit: 1793

reads on the limitation of claims 10 and 12 which claim a spectral reflectance of not more than about 2% and not more than about 5%.

7. Regarding claims 13 and 22, Simon discloses that the multilayer structure pigment has a roughly constant clarity parameter L^* for incidences below 45 degree (page 5, lines 15-22; page 18, lines 14-16).

8. Regarding claim 16, Simon discloses that the reference spectral reflectance is Caucasian skin (page 4, lines 1-2; page 9, lines 1-2). It should be noted that Simon discloses that said pigment may be used to make a customized cosmetic composition that is perfectly adapted to the color of the skin or keratinic fibers or the user (page 8, lines 8-10). Additionally, Simon discloses that the keratinic fibers may be blond, brown, or red (page 4, lines 3-4).

9. Regarding claim 18, Simon discloses that the multilayer structure pigment is substantially non-goniochromatic (page 5, lines 15-17).

10. Regarding claims 20-21, Simon discloses a composition containing said multilayer structure pigment which offers a spectral reflectance that is close to the reference spectral reflectance corresponding to a predetermined skin type, for the totality of the visible spectrum; the disclosed composition makes it possible to customized cosmetic composition that is preferably adapted to the color of the skin or

Art Unit: 1793

keratinic fibers of the user which is the desired end result for the cosmetic product (page 4, lines 16-20; page 8, lines 8-10).

11. Regarding claims 29-32, 49-52, Simon discloses measuring, for at least part of the visible spectrum, the spectral reflectance of the skin or keratinic fibers of the subject for whom the composition is intended (page 8, lines 1-8). The interference pigment is used in cosmetic composition for the manufacture of a physiologically-acceptable composition for dissimulating imperfections, such as broken blood vessels, spots, blackheads, wrinkles, and lines, in skin and keratinic fibers, such as hair, for example, grey hair (page 4, lines 5-15); moreover, the interference pigment is multilayered with alternating layers of high and low refractive index materials (page 7). Additionally, the spectral reflectance of the multilayer structure differs, for the considered part of the visible spectrum, which is taken to be between 400 nm to 700 nm, no more than "+/- 10%" from the reference spectral reflectance (page 4, lines 20-24). When the foundation containing said composition containing said pigment is applied on the subject's skin, attenuation of a given color hue such as yellow may be caused (page 9, lines 9-11). Said composition contains a physiologically acceptable medium as well (page 6, line 16). The type of skin onto which this composition is used may be Caucasian, light brown, dark brown, or Asian (page 4, lines 1-2). In addition, the references spectral reflectance may have, for at least certain wavelength values, a reflectance selected to attenuate a chromatic dominant of the considered skin type, for example yellow (page 5, lines 11-13).

It is noted that it is inherent for the process of using the composition containing said pigment to be applied onto the skin in order to be able to cause a specific attenuation or to be able to measure the spectral reflectance.

12. Regarding claim 33-38, Simon teaches a method for manufacturing a cosmetics composition incorporating multilayer structure pigment (page 7, lines 21-23) in which the spectral reflectance of the multilayer structure differs, for the considered part of the visible spectrum, which is taken to be between 400 nm to 700 nm, no more than "+/- 10%" from the reference spectral reflectance (page 4, lines 20-24). In addition, in Fig. 2 (page 26), Simon discloses that the layers of high and low reflective indices are totally covering one another; the top layer covering the underlying layer (page 7, lines 13-14; page 16).

13. Regarding claim 39, Simon discloses the spectral reflectance being different by not more than 10% from the reference; therefore, the reference inherently applies that said composition in a cosmetic product has not only been applied to a person's skin who was intended to receive the cosmetic product but also to a person who is different from the one who was intended to receive it.

14. Regarding claim 40, Simon discloses that said composition is applied on the skin of the of the person who is intended to receive it (page 8, lines 1-3), and that the

composition can be customized to adapt the color of the skin or keratinic fibers of the user (page 8, lines 8-10).

15. Regarding claims 42 and 44, Simon discloses Caucasian, light brown, dark brown, or Asian as some examples of the type of skin, which is well settled as a keratinous material (Fig. 1; page 4, lines 1-2; page 9, lines 1-2).

16. Regarding claims 45-48, Simon discloses that said composition when applied on the skin yields a foundation whose spectral reflectance approaches that of a the subject's skin or differs from it in a predetermined fashion in order to attenuate a given color hue, for example, yellow (page 9, lines 14-17). Furthermore, in general, using the said composition containing said pigment, it is possible to customize cosmetic foundation that is preferably adapted to the color of the skin or keratinic fibers of the user (page 8, lines 8-10). Furthermore, Simon discloses that the spectral reflectance of the multilayer structure of the pigment, for the visible spectrum which includes wavelengths between 400 nm and 700 nm, is no more than "+/- 10%" from the reference spectral reflectance (page 4, lines 21-24; page 9, lines 9-11).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1793

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 2-3, 8, and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of US Patent No. 5,082,660 to Qunaian et al.

19. Regarding claims 2-3, 8, and 14-15, Simon et al. disclose a multilayer structure pigment used in a composition used in cosmetic such as foundation in which the spectral reflectance of the composition compared to a reference spectral reflectance differs by not more than 10% in lights reflected in the visible spectrum, from 400 nm to 700 nm as described in detail above. Simon, also, discloses that the largest dimension of the pigment ranges from 10 μm to 50 μm (page 6, lines 4-5). Moreover, Simon teaches that that the multilayer structure may be symmetrical (page 5, lines 21-22).

However, Simon does not disclose any particular shape for the pigment particles; the reference does not disclose that the particles are in spherical or globular shapes.

Qunaian et al. teach invisible foundation composition with spherical shape used in foundation composition.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art, to modify Simon et al. in order to include the particle shape, spherical shape, as that taught by Qunanian et al. motivated by the fact that Qunanian et al., also drawn to foundation composition, teach the sue of spherical shaped particles in

Art Unit: 1793

foundation composition to hide the skin defects such as line (column 2, lines 60-65; column 3, lines 35-38).

20. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of US Patent Application Publication No. 2003/0035883 to Nishikata et al.

21. Regarding claims 4-5, Simon teaches a multilayer structure pigment used in a composition used in cosmetic such as foundation in which the spectral reflectance of the composition compared to a reference spectral reflectance differs by not more than 10% in lights reflected in the visible spectrum, from 400 nm to 700 nm as described in detail above. Simon, also, discloses that the largest dimension of the pigment ranges from 10 μm to 50 μm (page 6, lines 4-5). Moreover, Simon teaches that that the multilayer structure may be symmetrical (page 5, lines 21-22). Furthermore, the pigment used in said composition is coated with alternating layers of low and high refractive index (page 7, lines 13-16).

Simon does not disclose the shape of the substrate.

Nishikata et al. disclose a coated powder used in cosmetics, which has cores of spherical shape.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Simon in order to include the spherical shape cores as that taught by Nishikata et al. motivated by the fact that Nishikata et al, also drawn to coated

powders used in cosmetics formulations, disclose that spherical shape cores allow light to diffuse and transmit uniformly ([0001], [0008], [0009], [0015]).

22. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of US Patent Application Publication No. 2003/0147820 to Bertaux et al.

23. Regarding claim 7, Simon teaches a multilayer structure pigment used in a composition used in cosmetic such as foundation in which the spectral reflectance of the composition compared to a reference spectral reflectance differs by not more than 10% in lights reflected in the visible spectrum, from 400 nm to 700 nm as described in detail above. Simon, also, discloses that the largest dimension of the pigment ranges from 10 μm to 50 μm (page 6, lines 4-5). Moreover, Simon teaches that that the multilayer structure may be symmetrical (page 5, lines 21-22). Furthermore, the pigment used in said composition is coated with alternating layers of low and high refractive index (page 7, lines 13-16).

Simon does not teach particles of cores of spherical shape made of glass.

Bertaux et al. teach pearlescent pigment based on spherical shape substrate made of glass used in cosmetic formulations ([0001], [0016]).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Simon in order to include spherical shape substrate made of glass as that taught by Bertaux et al. motivated by the fact Bertaux et al., also drawn to

Art Unit: 1793

cosmetic formulations, disclose pearlescent pigment that are partially transparent ([0001]-[0002], [0016]).

24. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of Nishikata et al. as applied to claim 4 above, and further in view of US Patent No. 5,635,574 to Aoyagi et al.

25. Regarding claim 4, Simon teaches a multilayer structure pigment used in a composition used in cosmetic such as foundation in which the spectral reflectance of the composition compared to a reference spectral reflectance differs by not more than 10% in lights reflected in the visible spectrum, from 400 nm to 700 nm as described in detail above. Simon, also, discloses that the largest dimension of the pigment ranges from 10 μm to 50 μm (page 6, lines 4-5). Moreover, Simon teaches that that the multilayer structure may be symmetrical (page 5, lines 21-22). Furthermore, the pigment used in said composition is coated with alternating layers of low and high refractive index (page 7, lines 13-16). Simon in view of Nishikata et al. disclose spherical shape cores of the pigment particles.

The prior art do not disclose that the substrate of said pigment comprises a microsphere.

Aoyagi et al. disclose microshperes which if made strong and of uniform size, in cosmetic articles.

It would have been obvious to a person of ordinary skill in the art in order to combined Simon in view of Nishikata et al. as well as Aoyagi et al. in order to include the microsphere in said pigment motivated by the fact that Aoyagi et al., also drawn to cosmetic articles, disclose that such microspheres used in cosmetic have high adsorbent affinity and that are fully satisfactory in cosmetic articles (column 5, lines 1-14).

Response to Amendment

26. Applicant's amendment to claims 1, 17, 29, 44-45, 47, and 51, in pages 2-3, 5, and 7-8, filed October 12, 2007 is acknowledged. However, the amendments are not sufficient to place the claims in condition for allowance.

Response to Arguments

27. Applicant's arguments filed October 12, 2007 have been fully considered but they are not persuasive.

Applicant has argued that Simon teaches that particles of the pigment comprise an upper layer which does not coat completely the underlying layer; furthermore, the applicant has made a reference to a paragraph in page 19, lines 18-22 of the translation of WO 00/75240 which was submitted with the Final Action mailed on July 9, 2007.

The examiner, respectfully, disagrees. Simon discloses multilayer pigment in which the layers of high and low reflective indices are totally covering one another; the top layer covering the underlying layer (page 7, lines 13-14; Fig. 2 in page 16).

With regard to the reference made to the paragraph in page 19, lines 18-22, it is submitted that said paragraph of "The multilayer structure may be made by depositing successive layers of the desired materials onto a flexible support. Thus formed, the coating is then separated from the support in order to fragment it and make the elementary pigment particles." is not found in page 19, but it is in page 17, lines 18-22. Nevertheless, the statement of "This fragmentation process would expose underlying coating layers", in which as indicated by the applicant, would follow said paragraph does not appear in the reference, Simon.

The examiner would appreciate if the applicant clarifies where in the reference said statement was included.

Moreover, page 17, lines 18-22 disclose the separation from the support and not exposing the underlying coating.

28. Applicant's arguments, see page 9, filed October 12, 2007, with respect to the rejection(s) of claim(s) 1 and 17 under 112, second paragraph as a result of the incorporation of Figure 4 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made under Title 35 U.S.C. 112, second paragraph because said claims, claims 1 and 17, are indefinite since "C" and "M" are not defined in Figure 4, as indicated in details above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pegah Parvini whose telephone number is 571-272-2639. The examiner can normally be reached on Monday to Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PP


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